IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6304 of 1995

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TOURISM CORPORATION OF GUJARAT LTD - Petitioner(s)

Versus

ALUBHAI PATHUBHAI MAKWANA - Respondent(s)

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Appearance :

MR NAIK for M/S TRIVEDI & GUPTA for Petitioner No(s).: 1.

MR RV DESAI for Respondent No(s).: 1.
MR PRABHAKAR UPADYAY for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 29/06/2005

ORAL JUDGMENT

1.0 The petitioner Corporation has challenged the order dated 18.04.1995 passed by the Labour Court, Ahmedabad in

Reference (LCA) No.717 of 1990, whereby the said reference was allowed.

2.0 The brief facts of the case are that the respondent herein was working as a Driver with the petitioner Corporation on probation w.e.f. 20.01.1982. It is the case of the petitioner Corporation that since during the period of probation, the services of the respondent were not found to be satisfactory, several Memos / warnings were issued to the respondent for improving his performance and behaviour. However, since there was no improvement in the performance and behaviour of the respondent, the petitioner Corporation vide order dated 15.12.1982 dismissed the respondent from service.

2.1 Feeling aggrieved by the said order, the respondent preferred a reference being Reference (LCA) No.717 of 1990 before the Labour Court, Ahmedabad. The Labour Court, Ahmedabad by impugned order allowed the said reference. Hence, this petition.

3.0 While admitting the matter on 28.06.1996, this Court had stayed the implementation of the award of the Labour Court with regard to grant of back wages. Pursuant to the above order, the respondent was reinstated in service. The respondent retired from service on 31.10.2003. In that view of the matter, the question which is now required to be considered by this Court is regarding continuity of service and grant of back wages.

4.0 Mr. Naik learned advocate for the petitioner has submitted that the petitioner was appointed on probation vide order dated 20.01.1982. He has contended, that, even

otherwise, the respondent is not entitled for back wages since he has not worked during the period from 1982 to 1995. He has, therefore, submitted that the Labour Court has committed an error in granting the respondent reinstatement with continuity in service and full back wages.

5.0 Mr. Upadhyay learned advocate learned advocate for the respondent has submitted that the period of probation of the respondent workman was over in July 1982. He has submitted that from the Notices issued to the respondent, it is clear that the order of termination was passed on the premise of alleged misconduct of the respondent and not on the ground that the performance of the respondent was unsatisfactory during the period of probation. He has, therefore, submitted that the Labour Court has rightly granted reinstatement with continuity in service and full back wages to the respondent.

6.0 I have heard learned counsel for the parties and perused the documents placed on record. Having gone through the order of dismissal, it is required to be noted that the said order does not mention as to whether the probation period of the respondent was over or not. Moreover, the petitioner Corporation had not even issued any order / intimation stating that the period of probation of the respondent workman has been extended or not. On the contrary, on a bare perusal of the said termination order, it is clear that the services of the respondent workman were terminated. Hence, I am of the opinion that the view taken by the Labour Court is just and proper since the respondent was dismissed from service though his period of probation was over.

7.0 However, in the impugned order, the Labour Court has not given cogent reasons as to on what basis it has awarded full back wages to the respondent. Apart from that, in view of the principle laid down by the Apex Court that a workman shall be entitled for wages only if he has worked for the said period, the respondent herein cannot be said to be entitled for back wages since he had not worked for the said period. In that view of the matter, the view taken by the Labour Court as regards grant of full back wages is erroneous and is required to be quashed and set aside.

8.0 For the foregoing reasons, this petition is partly allowed. The impugned order dated 18.04.1995 passed by the Labour Court, Ahmedabad in Reference (LCA) No.717 of 1990 as regards directing the petitioner Corporation to reinstate the respondent workman with continuity in service is ordered to be confirmed and the direction as regards awarding full back wages to the respondent workman is ordered to be quashed and set aside. The petitioner Corporation shall pay all the retirement benefits to the respondent, that shall flow from the grant of continuity of service, within a period of three months from the receipt of writ of this order. With the above directions, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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